

IN RE:) In Proceedings
) Under Chapter 7
LOUIS C. SAXTON,)
) No. BK 86-31240
Debtor(s).)

This matter is before the Court on a Motion for Leave to File Objections to Discharge Instanter, filed by the United States of America on behalf of the Railroad Retirement Board ("Board"). On October 25, 1988 the Court entered an order allowing debtor to reopen the bankruptcy case in order to add the Board as an unsecured creditor. The order expressly provided that December 27, 1988 was the last date for filing complaints objecting to dischargeability. The instant motion, which was filed January 5, 1989, now requests that the Board be allowed to file instanter a complaint objecting to the dischargeability of a certain debt under 11 U.S.C. §523(a)(2)(A) and §523(a)(3).

A complaint to determine the dischargeability of any debt pursuant to section 523(c) of the Code shall be filed not later than 60 days following the first date set for the meeting of creditors held pursuant to section 341(a) On motion of any party in interest, ...the court may for cause extend the time fixed under this subdivision. The motion shall be made before the time has expired. (Emphasis added.)

The court may enlarge the time for taking

action under [Rule] ...4007(c)...only to the extent and under the conditions stated in [that rule].

Rule 4007(c) by its terms sets a fixed deadline for filing a complaint regarding dischargeability and additionally requires that a motion to extend such deadline be made within the original time period allowed for such complaint. It has been held that the court has no discretion to grant a motion to extend time if it is not filed within that time period. 8 Collier on Bankruptcy, §4007.05[3][a], at 4007-12. See also In re Alton, 837 F.2d 457 (11th Cir. 1988); In re Hill, 811 F.2d 484 (9th Cir. 1987). Moreover, Rule 9006(b)(3) makes clear that the normal rule allowing an extension of time by motion filed after a time period has expired does not apply to the deadline set by Rule 4007(c). 8 Collier on Bankruptcy, §4007.05[3][a], at 4007-12 to 13. Thus, it appears that the time requirements of Rule 4007(c) are mandatory and that this Court has no discretion to grant the Board's motion filed after the expiration of the time period of Rule 4007(c).¹

Accordingly, IT IS ORDERED that the Board's Motion for Leave to File Objections to Discharge Instantly is DENIED.

¹Under Rule 4007(b), a complaint filed pursuant to section 523(a)(3) may be filed at any time. Section 523(a)(3) provides that debts which are neither listed nor scheduled are nondischargeable unless the creditor had notice or actual knowledge of the case in time to file a dischargeability complaint. However, in light of this Court's order allowing debtor to add the Board as a creditor and granting the Board sixty days to file a complaint objecting to dischargeability, the Board clearly had notice of the case and cannot now argue that the debt in question is nondischargeable under section 523(a)(3).

_____/s/ Kenneth J. Meyers
U.S. BANKRUPTCY JUDGE

ENTERED: February 9, 1989